

§ 10.63

filed in the Office or be called as a witness, except that the practitioner may undertake the employment and the practitioner or another practitioner in the practitioner's firm may testify:

(1) If the testimony will relate solely to an uncontested matter.

(2) If the testimony will relate solely to a matter of formality and there is no reason to believe that substantial evidence will be offered in opposition to the testimony.

(3) If the testimony will relate solely to the nature and value of legal services rendered in the case by the practitioner or the practitioner's firm to the client.

(4) As to any matter, if refusal would work a substantial hardship on the client because of the distinctive value of the practitioner or the practitioner's firm as counsel in the particular case.

§ 10.63 Withdrawal when the practitioner becomes a witness.

(a) If, after undertaking employment in a proceeding in the Office, a practitioner learns or it is obvious that the practitioner or another practitioner in the practitioner's firm ought to sign an affidavit to be filed in the Office or be called as a witness on behalf of a practitioner's client, the practitioner shall withdraw from the conduct of the proceeding and the practitioner's firm, if any, shall not continue representation in the proceeding, except that the practitioner may continue the representation and the practitioner or another practitioner in the practitioner's firm may testify in the circumstances enumerated in paragraphs (1) through (4) of § 10.62(b).

(b) If, after undertaking employment in a proceeding before the Office, a practitioner learns or it is obvious that the practitioner or another practitioner in the practitioner's firm may be asked to sign an affidavit to be filed in the Office or be called as a witness other than on behalf of the practitioner's client, the practitioner may continue the representation until it is apparent that the practitioner's affidavit or testimony is or may be prejudicial to the practitioner's client.

37 CFR Ch. I (7-1-04 Edition)

§ 10.64 Avoiding acquisition of interest in litigation or proceeding before the Office.

(a) A practitioner shall not acquire a proprietary interest in the subject matter of a proceeding before the Office which the practitioner is conducting for a client, except that the practitioner may:

(1) Acquire a lien granted by law to secure the practitioner's fee or expenses; or

(2) Contract with a client for a reasonable contingent fee; or

(3) In a patent case, take an interest in the patent as part or all of his or her fee.

(b) While representing a client in connection with a contemplated or pending proceeding before the Office, a practitioner shall not advance or guarantee financial assistance to a client, except that a practitioner may advance or guarantee the expenses of going forward in a proceeding before the Office including fees required by law to be paid to the Office, expenses of investigation, expenses of medical examination, and costs of obtaining and presenting evidence, provided the client remains ultimately liable for such expenses. A practitioner may, however, advance any fee required to prevent or remedy an abandonment of a client's application by reason of an act or omission attributable to the practitioner and not to the client, whether or not the client is ultimately liable for such fee.

§ 10.65 Limiting business relations with a client.

A practitioner shall not enter into a business transaction with a client if they have differing interests therein and if the client expects the practitioner to exercise professional judgment therein for the protection of the client, unless the client has consented after full disclosure.

§ 10.66 Refusing to accept or continue employment if the interests of another client may impair the independent professional judgment of the practitioner.

(a) A practitioner shall decline proffered employment if the exercise of the practitioner's independent professional

judgment in behalf of a client will be or is likely to be adversely affected by the acceptance of the proffered employment, or if it would be likely to involve the practitioner in representing differing interests, except to the extent permitted under paragraph (c) of this section.

(b) A practitioner shall not continue multiple employment if the exercise of the practitioner's independent professional judgment in behalf of a client will be or is likely to be adversely affected by the practitioner's representation of another client, or if it would be likely to involve the practitioner in representing differing interests, except to the extent permitted under paragraph (c) of this section.

(c) In the situations covered by paragraphs (a) and (b) of this section a practitioner may represent multiple clients if it is obvious that the practitioner can adequately represent the interest of each and if each consents to the representation after full disclosure of the possible effect of such representation on the exercise of the practitioner's independent professional judgment on behalf of each.

(d) If a practitioner is required to decline employment or to withdraw from employment under a Disciplinary Rule, no partner, or associate, or any other practitioner affiliated with the practitioner or the practitioner's firm, may accept or continue such employment unless otherwise ordered by the Director or Commissioner.

§ 10.67 Settling similar claims of clients.

A practitioner who represents two or more clients shall not make or participate in the making of an aggregate settlement of the claims of or against the practitioner's clients, unless each client has consented to the settlement after being advised of the existence and nature of all the claims involved in the proposed settlement, of the total amount of the settlement, and of the participation of each person in the settlement.

§ 10.68 Avoiding influence by others than the client.

(a) Except with the consent of the practitioner's client after full disclosure, a practitioner shall not:

(1) Accept compensation from one other than the practitioner's client for the practitioner's legal services to or for the client.

(2) Accept from one other than the practitioner's client any thing of value related to the practitioner's representation of or the practitioner's employment by the client.

(b) A practitioner shall not permit a person who recommends, employs, or pays the practitioner to render legal services for another, to direct or regulate the practitioner's professional judgment in rendering such legal services.

(c) A practitioner shall not practice with or in the form of a professional corporation or association authorized to practice law for a profit, if a non-practitioner has the right to direct or control the professional judgment of a practitioner.

§§ 10.69–10.75 [Reserved]

§ 10.76 Canon 6.

A practitioner should represent a client competently.

§ 10.77 Failing to act competently.

A practitioner shall not:

(a) Handle a legal matter which the practitioner knows or should know that the practitioner is not competent to handle, without associating with the practitioner another practitioner who is competent to handle it.

(b) Handle a legal matter without preparation adequate in the circumstances.

(c) Neglect a legal matter entrusted to the practitioner.

§ 10.78 Limiting liability to client.

A practitioner shall not attempt to exonerate himself or herself from, or limit his or her liability to, a client for his or her personal malpractice.